

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1576 – SB 1566

April 16, 2012

**SUMMARY OF AMENDMENT (016608):** Deletes all language after the enacting clause. Requires a local government to send notification to a property owner that it intends to initiate condemnation proceedings 60 days prior to filing a petition in a court with subject matter jurisdiction over the property, including with the notice a statement of value, a form describing the options available to the property owner regarding adjudication of damages, the name and address of the entity to who the property owner must give notice, and an arbitration initiation form created by the local government entity.

The options given to the property owner to adjudicate the issue of damages must include: the property owner may accept the amount shown in the statement of value; the property owner may reject the amount listed and proceed to the negotiation process by listing a counter offer; the property owner may reject the amount listed and proceed to the arbitration process by sending a signed and dated arbitration initiation form to the county; the property owner may reject the amount listed in the statement of value and proceed to court by filing an answer on the issue of damages with the court. The property owner must make this decision within 60 days of receiving notice from the county. After receiving the property owner's response, the local government entity shall have 60 days to respond.

If the property owner chooses to proceed to arbitration, both parties shall agree upon the selection of the arbitrator. If the parties cannot agree upon the arbitrator, the property owner may elect to proceed to arbitration with the American Arbitration Association (AAA). If the property owner does not agree to the use of the AAA, the property owner may request the court to appoint an arbitrator. Prior to the commencement of arbitration, the property owner shall submit an appraisal of the property to the county and the arbitrator. The arbitration costs shall be shared equally with both parties and either party may request that the court enter judgment confirming, modifying, or vacating the decision and award of the arbitrator.

**CORRECTED FISCAL IMPACT OF ORIGINAL BILL:**

Decrease State Expenditures – Not Significant

Increase Local Expenditures – Exceeds \$322,600/Permissive

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

Unchanged from the corrected fiscal note.

HB 1576 – SB 1566

Assumptions applied to amendment:

- Local government entities will be required to follow the provisions of the bill as amended when seeking to acquire land through eminent domain.
- Based on information provided by the Tennessee Department of Transportation (TDOT), there is an average of three occasions per county per year in which eminent domain is used to acquire land for local purposes.
- Local governments will notify property owners by mail of their intent to file petitions to initiate condemnation proceedings resulting in an increase in local expenditures of \$128 [(95 counties x 3 condemnations = 285) x \$0.45 postage].
- The total payment for state land purchases in 2011 was \$26,506,764 with individual purchase amounts ranging from \$40 to \$4,868,100 with an average of \$82,834 paid per purchase (\$26,506,764 total payments / 320 occasions).
- Land purchase prices will vary based on the total acreage to be purchase and the location of the land.
- Applying the same average payment, the total payment for local land purchases is estimated to be \$23,607,690 (285 occasions x \$82,834).
- The provisions of this bill as amended provide that the parties shall agree upon an arbitrator, use the AAA, or have an arbitrator appointed by the court and all arbitration fees will be equally shared by local governments and property owners
- It is assumed the AAA fee schedule will be comparable with other arbitration firms or individuals used for arbitration purposes.
- According to AAA, fees are assessed based on the amount of the claim filed. There is an initial filing fee for each claim and a counterclaim filed, as well as a final fee assessed.
- Based on the commercial arbitration fee schedule provided by AAA, the initial filing fee for a claim less than \$10,000 is \$775 with a final fee assessed at \$200. Claims greater than \$10,000 and less than \$75,000 have an initial filing fee of \$975 with a final fee of \$300. Claims between \$75,000 and \$150,000 have an initial filing fee of \$1,850 and a final fee of \$750. Claims between \$1,000,000 and \$5,000,000 have an initial filing fee of \$8,200 and a final fee of \$3,250.
- These fees do not include prices for rental of hearing rooms and any additional administrative fees to be assessed by the AAA.
- It is reasonably estimated arbitration fees assessed to each claim filed will exceed \$1,617  $[(\$775 \text{ initial fee} + \$200 \text{ final fee}) + (\$975 \text{ initial fee} + \$300 \text{ final fee}) + (\$1,850 \text{ initial fee} + \$750 \text{ final fee})] / 3$ . It is assumed property owners will file a similar counterclaim which will result in arbitration fees exceeding \$1,617 which will result in a total cost exceeding \$3,234 per arbitration.
- It is assumed 70 percent of cases will be challenged by property owners, who will file a counterclaim separate from the claim filed by the local government entity.
- The resulting increase in local expenditures is reasonably estimated to exceed \$322,592 (\$3,234 per occasion x 285 occasions x 70.0% challenged x 50.0% percent paid by local government).
- The bill as amended provides both parties the opportunity to request a judgment of the court confirming, modifying, or vacating the decision and award given by the arbitrator, as well as the right to an appeal of the court's judgment.

- It is unknown how many parties will request a judgment of the court regarding arbitration decisions and awards; however it is assumed local government entities currently budget for court proceedings related to the use of eminent domain. The estimated fiscal impact of the bill as amended assumes that additional costs to local governments are the costs associated with arbitration being used as an additional resource to contest local governments choosing to use eminent domain. While the addition of arbitration may result in additional court proceedings, the estimated fiscal impact of those court proceedings will not be significantly greater than the current court costs associated with eminent domain proceedings incurred by local governments.
- According to the Administrative Office of the Courts, authorizing property owners to avoid condemnation proceedings by participating in a negotiation or arbitration will not significantly reduce the total caseload to chancery courts.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

/jrh